

**[6]** Full Planning Permission

S/153/01123/23

**APPLICANT:** Mr. G. Dastgeer,

**VALID:** 19/06/2023

**AGENT:** Mr. P. Sparkes,

**PROPOSAL:** Planning Permission - Change of use, conversion of and alterations to the existing retail premises to provide a mixed use comprising a café (Class E) and hot food takeaway (sui generis), and installation of an extraction system and flue.

**LOCATION:** 112 LUMLEY ROAD, SKEGNESS, PE25 3NA

## **1.0 REASONS FOR COMMITTEE CONSIDERATION**

1.1 This application was considered by Members at their Planning Committee meeting held on 5 October 2023 when it was deferred for negotiations to remove the shisha bar from the application. The applicant agreed to make this change and the application has been amended accordingly. The original officer report to committee is repeated below but amended to take account of this change.

1.2 The application was originally presented to the Planning Committee as the proposal would constitute a departure from the Skegness Neighbourhood Development Plan (a part of the development plan for the district) and the recommendation was for approval.

## **2.0 THE SITE AND SURROUNDINGS**

2.1 The site is located in the coastal town of Skegness, within the main retail/commercial area of Lumley Road. The established use of the building is for retail, and forms part of a long terrace of properties. Immediately to the east is another retail outlet, whilst to the west is a seaside food kiosk. Elsewhere along the same frontage are further retail outlets, but also a wide variety of town centre commercial outlets. There is a wide pavement area and a bus stop a short distance to the east. The current shop frontage is modern, wide, part glazed and part open.

## **3.0 PROPOSED DEVELOPMENT**

3.1 The application is for '*Change of use, conversion of and alterations to the existing retail premises to provide a mixed use comprising a café (Class E) and a hot food takeaway (sui generis) including associated external seating area and installation of an extraction system and flue*'.

3.2 The application has been amended twice since first submitted. The first change was to reduce the amount of seating at the front of the application site for shisha smoking and the second time was to remove the shisha bar from the application in its entirety.

## **4.0 CONSULTATION**

## **Publicity**

- 4.1 A site notice has been displayed and neighbours have been notified in writing. The Ward member is aware of the application via the weekly list.
- 4.2 The application has been advertised in the press and on site as a departure to the Skegness Neighbourhood Development Plan.
- 4.3 Set out below are the consultation responses that have been received on this application. These responses may be summarised, and full copies are available for inspection separately. Some of the comments made may not constitute material planning considerations and refer to the original and first amendment when the shisha bar was included.

## **Consultees**

- 4.4 SKEGNESS TOWN COUNCIL - Originally objected on the grounds of adverse effect to pedestrian safety, flow and congestion, and close proximity to a bus stop. Following reconsultation continued to object on grounds that it is not an appropriate location for a shisha bar, in a prime position in a family focused tourist destination.
- 4.5 LCC HIGHWAYS AND LEAD LOCAL FLOOD AUTHORITY - Initial response - No objection. No further response received following reconsultation.
- 4.6 ENVIRONMENTAL SERVICES - No response received.
- 4.7 ENVIRONMENTAL SERVICES (FOOD SAFETY) - Initial response - Object on grounds of issues with shisha smoking, state that it must remain outside noting other legislative requirements. No further response received following reconsultation.
- 4.8 ENVIRONMENT AGENCY - No response received.

## **Neighbours/third party**

- 4.9 2X letters of objection received initially (from neighbouring traders) raising the following concerns: (no further comments received following reconsultation):
- Impacts on amenity;
  - Shisha bar will be just a few feet from the child friendly ice cream serving area, smell will be a nuisance, may impact on health and lessen attraction of business.
  - Shisha bar will be detrimental to the traditional seaside shops surrounding it;
  - Concerns of secondary smoke, significant level of chemicals in shisha;
  - Isn't a good look for Skegness;
  - Impact on amenity, food shop will no longer be attractive to customers due to smell from the smoking bar.

## **5.0 RELEVANT PLANNING HISTORY**

5.1 No recent history.

## **6.0 PLANNING CONSIDERATIONS Planning Policy**

6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the development plan unless material considerations indicate otherwise. The Development Plan comprises of the East Lindsey Local Plan (adopted 2018), including the Core Strategy and the Settlement Proposals Development Plan Document; and any made Neighbourhood Plans. The Government's National Planning Policy Framework (NPPF) is a material consideration.

### **East Lindsey Local Plan**

Including but not limited to:

SP1 - A Sustainable Pattern of Places  
SP2 - Sustainable Development  
SP10 - Design  
SP14 - Town/Village Centres and Shopping  
SP17 - Coastal East Lindsey  
SP22 - Transport and Accessibility

### **Skegness Neighbourhood Development Plan (NDP)**

Including but not limited to:

Policy Theme 3 - Skegness Town Centre - Policy TC1  
Policy Theme 4 - Transport and Infrastructure - Policy INF1  
Policy Theme 7 - Design and Environment - Policy D1

### **National Planning Policy Framework (NPPF)**

#### **Other documents referred to**

Health Act 2006  
Stroud v North West Leicestershire District Council court case

## **7.0 OFFICER ASSESSMENT OF THE PROPOSAL**

7.1 The main planning matters in this case are considered to be:

Principle of the development;  
Impact on amenity;  
Impact on character of the area;  
Highway impacts;  
Flood risk.

## **Principle of the development**

- 7.2 Strategic Policy 1 of the Council's Local Plan identifies Skegness as a town, and the Skegness NDP recognises it as a service centre for nearby towns due to its relative size. SP2 offers support to sustainable development.
- 7.3 The site is within Skegness Town Centre and is designated as a Primary Shopping frontage, both as defined in the Local Plan Settlement Proposals document. As such, Strategic Policy 14 of the Council's Local Plan is relevant and seeks to expand and improve the town centre's retail, business, office, tourism, leisure, commercial and cultural facilities. Retail is considered important in maintaining the attractiveness, vibrancy and vitality of the district's town centres. However, given the shopping trends, many centres have been diluted through the introduction of cafes, pubs and offices which are now fundamentally part and parcel of the town centre offer, with the policy although aiming to retain a strong retail core, accepting the evolution of such areas and the provision that an appropriate mix of uses can help towards the vitality and viability of these areas.
- 7.4 This is reiterated through the National Planning Policy Framework at paragraph 86, and especially sub-para's a) & b) which seek policies and decisions that support the role that town centres play at the heart of local communities, and requires a positive approach to their growth, management and adaptation, including by allowing them to diversify in a way that can respond to rapid changes in the retail and leisure industries and, allows a suitable mix of uses.
- 7.5 Main town centre uses that are considered appropriate in such locations, are defined within Annex 2 of the NPPF: Glossary section highlighting retail, leisure, sport, recreation, office, arts culture and tourism development. However, this list is not exhaustive.
- 7.6 The application seeks a change of use from retail to a mixed-use comprising cafe (Class E) and takeaway (sui generis). The fact that hot food take away use is not specifically mentioned in Annexe 2, does not necessarily mean that Sui Generis uses are excluded from being a town centre use. It is considered that hot food takeaways have characteristics similar to other uses mentioned within the NPPF's definition such as retail or as a leisure or entertainment use (in the sense that it involves the sale of goods, provides for a hospitality/leisure/entertainment offer). It is considered helpful to note that this particular matter was debated through the High Courts in *Stroud v North West Leicestershire District Council*, where it was concluded "*...that hot food take away could be regarded as a species of retail use, although it was one which, as he rightly pointed out, attracted its own considerations in planning terms. That is evidenced by the fact that it is separated out into a use class of its own*".
- 7.7 Also of particular policy relevance is the Skegness Neighbourhood Development Plan, Policy Theme 3, Policy TC1. This seeks to encourage

and promote the development of active frontages. The NDP outlines that active frontages aim to ensure that there is visual engagement between the street and the ground floor of a building. At street level, active frontages provide visual interest to passers-by and can therefore help improve footfall in an area. Furthermore, the NDP seeks to preserve the vitality of the town centre by reaffirming the designation of primary frontages (these are consistent with those identified in the East Lindsey Local Plan at SP14) where the preservation of retail and other Class E uses will be promoted where possible. For clarity, Class E uses are wide ranging, including shops (other than for the sale of hot food), food and drink (which is mostly consumed on the premises), services principally to visiting members of the public including financial services, professional services (other than medical services), any other services which it is appropriate to provide in a commercial, business or service locality, Indoor sport and recreation (not swimming pools, ice rinks or motorised vehicles or firearms), Medical services not attached to the residence of the practitioner, non-residential creche, day centre or nursery, office, the research and development of products or processes, any industrial process, (which can be carried out in any residential area without causing detriment to the amenity of the area).

- 7.8 The NDP through Policy TC1 requires that development in Skegness Town Centre should lead to the creation of active frontages, in order to enhance the vitality of the town centre. It further states that in the Primary frontages, changes of use to non Class E uses will not be supported. This implies amongst other things, a concern that non Class E uses may generally be unable to contribute towards active frontages. SP14 of the Council's Local Plan is consistent but less prescriptive in that respect, simply confirming support for retail uses within the primary shopping frontage.
- 7.9 The proposed development would deliver a mixed use, the characteristics of which include the provision of a substantial amount of seating for use as the cafe element. This element is suggested by reference to the plans as a dominant provision within the scheme and would be a use, that on its own falls within Class E and would satisfy policy requirements. The takeaway element conflicts at face value with policy objectives but is noted to relate to a comparatively small area at the rear of the building. The building has a relatively open frontage and aspect to the street, with the plans indicating doors and screen to be held open during opening hours. Consequently, it is considered that the layout of the building and the mix of uses proposed, when considered collectively, would not only provide visual interest to the streetscene, but also generate footfall and activity during opening hours in a manner consistent with the aims of adopted policy for securing active frontages within the town centre.
- 7.10 Given the above, the mixed use scheme (Class E & Sui Generis) as proposed, is considered to be acceptable, and although technically a departure, is considered to satisfy the overall aims of the Skegness NDP, the Local Plan, and the advice contained within the NPPF. Other material factors present themselves for consideration as well, with the unit in question being currently vacant during a period of well documented

economic uncertainty and difficulties for High Streets in the country. Occupancy of the building in a manner that should generate additional footfall would not only be visually beneficial, but, it is considered would add to the vitality and vibrancy of the Town centre and encourage additional spending. It is therefore considered that, notwithstanding the prescriptive policy position of the NDP, the proposed uses would be acceptable in this location.

### **Impact on amenity**

- 7.11 SP10 of the Local Plan, states that development will be supported if it does not unacceptably harm residential amenity, which is reiterated in the NPPF at paragraph 130, stating that policies and decision should ensure that developments promote a high standard of amenity for existing and future users.
- 7.12 The building is within a town centre location, surrounded by a mix of commercial uses and a number of residential units. As it is situated on the main shopping/commercial street in Skegness, it is expected that there will be an existing level of noise throughout the day and evenings.
- 7.13 The proposal seeks permission for erection of a necessary new extraction flue to the rear of the property. This is positioned away from residential units and no objection has been received from colleagues in Environmental Services.
- 7.14 Overall, in relation to the plant to the rear, no significant harm is expected on residential amenity and it is not considered that this change of use, or the new flue would generate an increase in noise, traffic or other factors that would be harmful to the closest residential units. Furthermore, as noted above, no concerns have been raised by Environmental Health relating to noise generally.
- 7.15 Due to the shisha bar and its outside seating area now being omitted from the current proposal, amenity concerns relating to this use are no longer applicable.

### **Impact on character of the area**

- 7.15 SP10 of the Council's Local Plan relates to design. It sets out criteria by which the Council will support well-designed sustainable development, which maintains and enhances the character of the District's towns, villages and countryside. Chapter 12 of the NPPF reiterates this, in particular paragraph 130. Policy Theme 7 of the Skegness NDP (Policy D1) aims to raise the standard and quality of design in new developments within the town.
- 7.16 The proposed change of use to mixed use will result in internal changes to the ground floor plan to accommodate the uses. The frontage doors and screen is to be held open during opening hours, and this paired with the provision of a mixed use facility in an existing vacant building, is considered to be a betterment of the character of the commercial

streetscene. The other external changes such as the plant at the rear, are considered to be of an acceptable design and scale. There are no external changes proposed to the front of the building.

- 7.17 Overall the proposal is not considered to have a harmful impact on the character of the area, which accommodates other commercial uses.

### **Highway impacts**

- 7.18 The site is within the town centre and, as there is no parking associated with the site, the site is reliant on sustainable transport modes, including walking, cycling and public transport. LCC Highways has been consulted and raised no objection to the proposal, stating that it would not have an adverse impact on the public Highway. The proposal would be in accordance with SP22 of the Local Plan, with paragraphs 110 - 111 of the NPPF and also with Policy INF1 of the NDP.

### **Flood Risk**

- 7.19 The site falls within Flood Zone 3 - High risk and within the coastal zone. However, the development involves a change of use, and therefore the application is not subject to the sequential and exception tests, as stated in paragraph 168 of the NPPF. The application is accompanied by a Flood Risk Assessment, and the standing advice from the EA shows that both the existing and proposed uses are considered to be 'less vulnerable' uses. As such there is no increase in the flood risk from this proposal and subsequently no objection on this matter.

## **8.0 CONCLUSION**

- 8.1 To conclude, this proposal seeks a change of use from retail to a mixed use comprising of cafe and takeaway. The key issue in this case is that Policy TC1 of the NDP indicates that only Class E uses will be supported in this location in order to create active frontages. In this case, the proposed mixed use incorporating elements of Class E use is, on balance, considered to equally satisfy the active and safeguarding of vitality objectives of Policy TC1 of the NDP.
- 8.2 In all other aspects the proposal is acceptable and therefore is recommended for approval. It is considered that the proposal would be acceptable for the reasons outlined above. The proposal complies with the Policies and Government guidance mentioned previously and is recommended for approval subject to conditions set out below.

**RECOMMENDATION:** Approve

subject to the following conditions:

1. Full Permission  
The development hereby permitted must be begun not later than the expiration of three years beginning with the date of this permission.

Reason: In order to comply with the requirements of Section 51 of the Planning and Compulsory Purchase Act 2004.

- 2 The development hereby permitted shall only be undertaken in accordance with the following approved plan numbers;

Plan No. 23-2751-02 B Received by the LPA on 06/10/2023.

Plan No. 23-2751-03 B Received by the LPA on 06/10/2023.

Plan No. 23-2751-04 B Received by the LPA on 06/10/2023.

Reason: For the avoidance of doubt and the interests of proper planning.